



July 27, 2012

Obama Judicial Nominees Are Being Treated Fairly

On Monday, July 30, the Senate is scheduled to vote on the motion to invoke cloture on the nomination of Robert E. Bacharach to the U.S. Court of Appeals for the Tenth Circuit. By scheduling a vote on a circuit court nominee so late in a presidential election year, Senate Democrats have decided to abandon their prior standard for judicial nominees – the [Leahy Rule](#) – in favor of election-year politics.

“You know, there is a ... doctrine that says after June we will have to take a real close look at judges in a presidential election year.”

-- [Majority Leader Harry Reid](#)

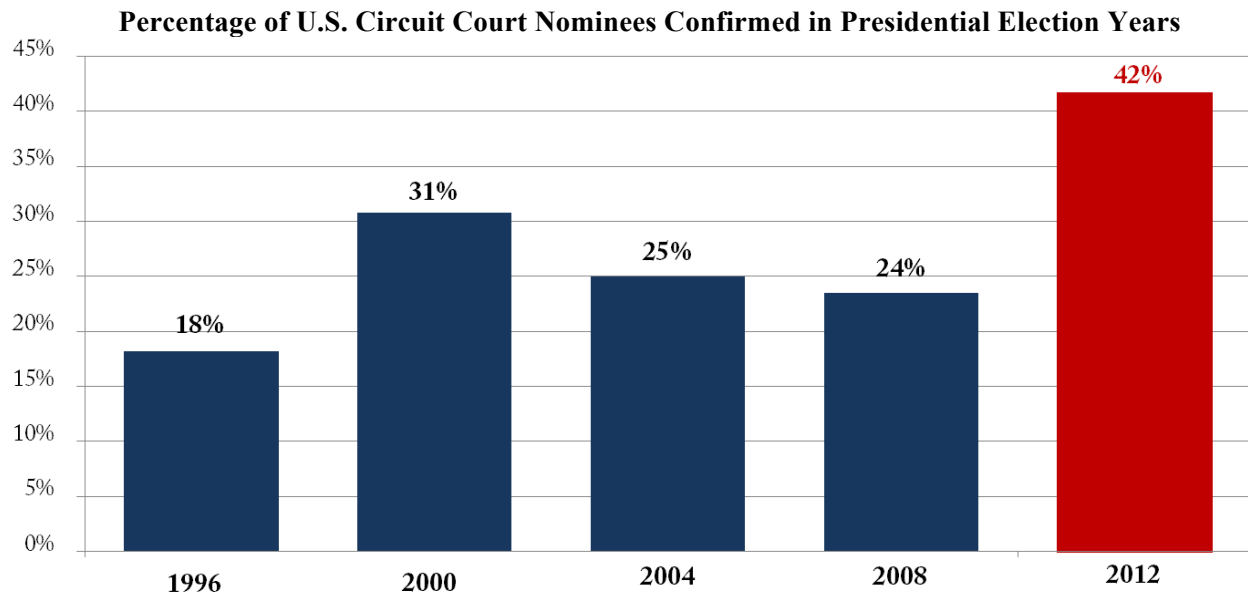
Senator Reid has scheduled Monday’s vote as an election-year gimmick to paint Senate Republicans as obstructionists. But a strategy of blaming Republicans doesn’t withstand scrutiny. No matter how you look at it, President Obama’s nominees to the federal judiciary are being treated at least as good as, and in most cases better, than President Bush’s.

- The Senate this year has already confirmed five of President Obama’s circuit court nominees. Comparatively, the Senate confirmed the same number of President Bush’s circuit court nominees in 2004 and confirmed four circuit court nominees in 2008.

Election Year	Last Circuit Court Confirmation	Total Circuit Confirmations That Year
2004	June	5
2008	June	4
2012	June <i>(So far)</i>	5 <i>(as of July 30)</i>

- Despite having exceeded the total number of President Bush’s circuit court nominees confirmed in 2008, Senate Democrats are now attempting to confirm circuit court nominees later in a presidential election year than any point in recent memory. According to the Congressional Research Service (CRS) no circuit court nominee has been [confirmed this late](#) in a presidential election year in **20 years**.

- Senate Democrats closed shop on President Bush’s circuit court nominees during the month of June in both 2004 and 2008.
- Taken as percentages, President Obama’s nominees also have had a significantly greater confirmation rate than Presidents Bush and Clinton. According to CRS, the percentage of circuit court nominees confirmed in presidential election years is the best it has been in [20 years](#).



Democrats Ignored Judicial Emergencies for President Bush’s Nominees

“The Senator who most frequently has asserted the existence of a [Leahy-]Thurmond Rule has been the current chairman of the Judiciary Committee, Patrick J. Leahy of Vermont.”

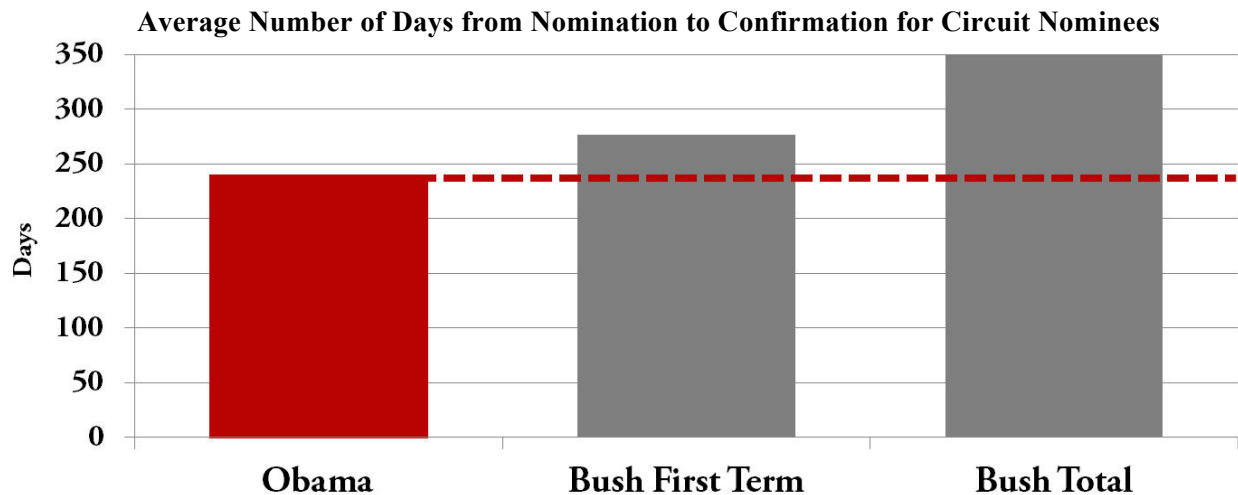
-- [Congressional Research Service](#)

- Of the eight circuit court nominees blocked by Democrats in 2004, four were nominated to fill vacancies declared to be judicial emergencies.
- In the late summer of 2008, six of the nine nominees to circuit courts halted by Democrats were slated to fill judicial emergencies.
- By contrast, there is currently only one judicial nominee who would fill a judicial emergency, and that nominee has yet to report out of the Senate Judiciary Committee and is therefore not ripe for consideration.
- In 2008, Judiciary Committee Chairman Patrick Leahy ignored the 25 percent vacancy rate on the Fourth Circuit and refused even to process several outstanding circuit court nominees, including:
 - Judge Robert Conrad (who was previously commended by Clinton Attorney General Janet Reno for his work as a federal prosecutor and confirmed unanimously as a U.S. Attorney and a U.S. district judge);

- Judge Glen Conrad (who had bipartisan home state support);
- Steve Matthews (who had home state support);
- U.S. Attorney Rod Rosenstein (whom Democrats refused to confirm because, they asserted, he was doing [too good a job](#) as U.S. Attorney to be promoted. Mr. Rosenstein continues to serve as U.S. Attorney and was recently selected to investigate the leak of national security information.)

The Senate Has Been Confirming President Obama's Judicial Nominees

- President Obama's judicial nominees to circuit courts have been confirmed by the Senate nearly 31 percent faster than President Bush's.



- Although the Senate has had to devote time and resources to process two Supreme Court nominations during the Obama administration, President Obama has had *25 percent more* judicial confirmations of lower court nominees in three and a half years (154) than President Bush had in his last four years (119).
- And for a presidential election year, President Obama *already* has exceeded the total number of confirmations (32) that President Bush received in *all* of 2008 (28).
- President Obama has had 27 district court nominees confirmed this year compared to 14 for President Bush at this same time in July 2008, and three more than the 24 total district court judges confirmed that entire year.